

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

IN RE MERIX CORPORATION
SECURITIES LITIGATION

Lead Case No. CV 04-826-MO
(Consolidated Cases)

This Document Relates to:
ALL ACTIONS

ORDER DISMISSING PLAINTIFFS'
SECOND AMENDED COMPLAINT

MOSMAN, J.,

This is a consolidated securities class action alleging claims under §§ 11, 12(a)(2), and 15 of the Securities Act of 1933. Plaintiffs principally allege they purchased stock from Merix' secondary public offering (SPO) and that Merix' SPO Prospectus contained materially false and misleading statements and omitted material facts necessary to avoid making misleading statements. Plaintiffs also allege underwriter defendants, as sellers of the security, are liable under § 12(a)(2) and that individual directors and officers are liable as controlling individuals under § 15. Now pending before the court are defendants' motions to dismiss (#89, #91), plaintiffs' request for judicial notice (#98), and plaintiffs' motion to file a surreply (#104).

After carefully considering the parties' moving papers, and with the benefit of extensive oral argument, defendants' motions to dismiss are GRANTED.

For the reasons stated on the record and in accordance with *In re Daou Systems, Inc. Secs. Litig.*, 411 F.3d 1006, 1028 (9th Cir. 2005), the court has stripped plaintiffs' §§ 11 and 12(a)(2) claims of all allegations of fraud insufficiently plead under Rule 9(b). Only a few paragraphs survive that could plausibly allege negligent conduct or negligent misrepresentations or omissions. Standing alone, these few paragraphs are insufficient to state a claim of negligence. *Id.* Because plaintiffs' § 15 claim is predicated upon liability under §§ 11 or 12, it is also necessarily dismissed.

Plaintiffs have now failed for the second time to meet the heightened pleading standard of Rule 9(b). The court finds that any further attempt to amend the complaint would be futile. Accordingly, plaintiffs' second amended complaint (#85) is DISMISSED WITH PREJUDICE. Plaintiffs' request for judicial notice (#98) and plaintiffs' motion to file a surreply (#104) are therefore DENIED as moot.

IT IS SO ORDERED.

DATED this 28th day of September, 2006.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court